

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ENRIQUE NICHOLAS GODOY,

12 Plaintiff,

13 v.

14 CALIFORNIA HIGHWAY PATROL
15 OFFICER J. BROCK, individually and
16 in his official capacity; CALIFORNIA
17 HIGHWAY PATROL OFFICER
STEADMON, individually and in his
official capacity; THE STATE OF
CALIFORNIA; and DOES 1 through
20, inclusive,

18 Defendants.
19

Case No. 3:13-cv-0194-GPC-BGS

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS**

(ECF NO. 7)

20 On January 24, 2013, Plaintiff filed a complaint, asserting claims for violations
21 of his civil rights and various common law torts. (ECF No. 1.) Before the Court is
22 Defendants' Motion to Dismiss, (ECF No. 7), which has been fully briefed, (ECF Nos.
23 9, 10), and which the Court finds suitable for disposition without oral argument, *see*
24 CivLR 7.1.d.1. After a careful review of the parties' submissions, and for the
25 following reasons, the Court will **GRANT** Defendants' Motion to Dismiss. Plaintiff's
26 First, Third, Fourth, Fifth, and Sixth Claims as alleged against defendants Brock and
27 Steadmon in their individual capacities are **DISMISSED WITH LEAVE TO**
28 **AMEND**. Plaintiff's remaining claims against defendant the State of California and/or

1 against Brock and Steadmon in their official capacities are **DISMISSED WITHOUT**
 2 **LEAVE TO AMEND.**

3 FACTUAL ALLEGATIONS

4 Plaintiff sets forth the facts underlying his claims in one paragraph:

5 On January 27, 2012 CHP officers, including defendants Brock,
 6 Steadmon, and Doe officers 1 through 20, while on duty with the CHP,
 7 confronted the plaintiff at his residence in the City of Escondido. The
 8 officers were investigating a prior hit and run accident. The officers had
 9 also received information concerning a separate alleged reckless driving
 10 incident around the same time and near the same location as the hit and
 11 run. The officers requested that plaintiff step out of his home for
 12 interrogation. When plaintiff declined, Brock and/or Steadmon reached
 13 into plaintiff's residence and forcefully seized hold of plaintiff's arm, and
 14 attempted to pull him out of the residence. After successfully pulling his
 arm away from the officers, plaintiff continued to decline the officer's
 [sic] requests to step out of his home. A short time later, the officers
 stepped into the residence without probable cause or warrant and
 deployed an electrical shock weapon which sent barbs into plaintiff's
 body and conducted repeated electrical energy impulses into plaintiff's
 body. At no time was plaintiff a threat to the officers or to others. The
 invasion of the barbs into plaintiff's body and the electrical energy
 impulses resulted in injuries and losses to plaintiff.

15 (ECF No. 1. at ¶ 10.)

16 Based on these allegations, Plaintiff asserts six claims for relief: (1) Violation
 17 of Civil Rights Causing Serious Bodily Injury; (2) Failure to Supervise Causing
 18 Constitutional Violations; (3) Negligence Causing Serious Bodily Injury; (4) Battery
 19 Causing Serious Bodily Injury; (5) Intentional Infliction of Emotional Distress; and (6)
 20 Negligent Infliction of Emotional Distress.

21 Plaintiff asserts his First Claim (excessive force) against defendants Brock and
 22 Steadmon, individually and in their official capacities. Plaintiff asserts his Second
 23 Claim (failure to supervise) against defendant the State of California. Plaintiff asserts
 24 his Third Claim (negligence) against all Defendants. Plaintiff asserts his Fourth Claim
 25 (battery) against defendants Brock and Steadmon without specifying whether the claim
 26 is against those defendants individually and/or in their official capacities. Lastly,
 27 Plaintiff asserts his Fifth Claim (IIED) and Sixth Claim (NIED) against all Defendants.

28 / / /

DISCUSSION

I. Legal Standard

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is warranted under Rule 12(b)(6) where the complaint lacks a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984); *see Neitzke v. Williams*, 490 U.S. 319, 326 (1989) (“Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law.”). Alternatively, a complaint may be dismissed where it presents a cognizable legal theory yet fails to plead essential facts under that theory. *Robertson*, 749 F.2d at 534. While a plaintiff need not give “detailed factual allegations,” a plaintiff must plead sufficient facts that, if true, “raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (*quoting Twombly*, 550 U.S. at 547). A claim is facially plausible when the factual allegations permit “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* In other words, “the non-conclusory ‘factual content,’ and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). “Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 129 S. Ct. at 1950.

In reviewing a motion to dismiss under Rule 12(b)(6), the court must assume the truth of all factual allegations and must construe all inferences from them in the light most favorable to the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). Legal

1 conclusions, however, need not be taken as true merely because they are cast in the
 2 form of factual allegations. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003);
 3 *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

4 Where a motion to dismiss is granted, “leave to amend should be granted ‘unless
 5 the court determines that the allegation of other facts consistent with the challenged
 6 pleading could not possibly cure the deficiency.’” *DeSoto v. Yellow Freight Sys., Inc.*,
 7 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well*
 8 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). In other words, where leave to
 9 amend would be futile, the Court may deny leave to amend. *See Desoto*, 957 F.2d at
 10 658.

11 **II. Analysis**

12 Defendants argue “[a]ll claims against the State of California and all claims
 13 against Officers Brock and Steadmon in their official capacities are barred by sovereign
 14 immunity under the Eleventh Amendment.” (ECF No. 7 at 2.) Defendants also argue
 15 Plaintiff’s “First Claim (excessive force) and Second Claim (failure to supervise) fail
 16 to state claims upon which relief can be granted under 42 U.S.C. § 1983 against the
 17 State of California or against Officers Brock and Steadmon because none is a ‘person’
 18 within the meaning of § 1983.” (*Id.*) Defendants lastly argue that Plaintiff’s “Third
 19 Claim (negligence), Fifth Claim (intentional infliction of emotional distress), and Sixth
 20 Claim (negligent infliction of emotional distress) fail to state claims upon which relief
 21 can be granted under California law against the State of California because no
 22 California statutory basis for public entity liability is alleged.” (*Id.*)

23 In response, Plaintiff argues that “[a]lthough the Eleventh Amendment arguably
 24 prevents suit against a non-consenting State, it does not prevent an action under Title
 25 42 U.S.C. section 1983 against the officers individually for violation of Plaintiff’s
 26 Fourth Amendment rights.” (ECF No. 9 at 2.) With regard to whether Brock and
 27 Steadmon are “persons” within the meaning of § 1983, Plaintiff argues that,
 28 “[a]lthough the State of California arguably may not be a ‘person’ under section 1983,

1 Officer Brock and Officer Steadmon are “persons” in their individual capacities.” (*Id.*)
2 With regard to his Third, Fifth, and Sixth Claims against the State of California,
3 “Plaintiff submits that the claims do not state a statutory basis against the public entity,
4 and requests leave to amend the complaint under Federal Rule of Civil Procedure
5 15(a)(1).” (*Id.* at 3.)

6 In reply, Defendants assert that Plaintiff has conceded that all of his claims
7 against the State of California and against Brock and Steadmon in their official
8 capacity are barred by the Eleventh Amendment. (ECF No. 10 at 2.) Defendants
9 similarly assert Plaintiff has conceded that Brock and Steadmon, in their official
10 capacities, are not “persons” under § 1983. (*Id.*) Defendants lastly note that Plaintiff
11 has conceded that he has not alleged a statutory basis for his Third, Fifth, and Sixth
12 Claims against the State of California. (*Id.*)

13 The Court finds Plaintiff has conceded that, pursuant to the Eleventh
14 Amendment, all of his claims should be dismissed to the extent they are asserted
15 against the State of California or against Brock and Steadmon in their official
16 capacities. Similarly, the Court finds Plaintiff has conceded that, pursuant to the
17 definition of a “person” under § 1983, his First Claim (excessive force) should be
18 dismissed to the extent it is asserted against Brock and Steadmon in their official
19 capacities. The Court further finds Plaintiff has conceded that he has not alleged a
20 statutory basis for asserting his Third, Fifth, and Sixth Claims against the State of
21 California, which claims are, in any event, barred by the Eleventh Amendment.
22 Accordingly, the Court will dismiss with prejudice each of Plaintiff’s claims to the
23 extent they are asserted against the State of California or against Brock and Steadmon
24 in their official capacities. Thus, Plaintiff’s First, Third, Fourth, Fifth, and Sixth
25 Claims—as alleged against Brock and Steadmon in their individual capacities—remain
26 to be analyzed.

27 Defendants argue “[a]ll claims against all Defendants fail to state claims upon
28 which relief can be granted under Federal or California law because Plaintiff fails to

1 allege sufficient facts to meet the requisite pleading standard.” (ECF No. 7 at 2.)
 2 Defendants argue “Plaintiff’s allegation that he was not ‘a threat to the officers or to
 3 others’ . . . is obviously a conclusion,” and that “it would be an unreasonable inference
 4 in light of Plaintiff’s admission [that] the Officers were investigating a serious crime,
 5 he ‘declined’ to ‘step out of his home for interrogation,’ ‘successfully pull[ed] his arm
 6 away from the officers,’ and ‘continued to decline the officer’s requests to step out of
 7 his home.’” (*Id.* at 6-7.)

8 Defendants further argue Plaintiff’s allegation that “Officers tased him for no
 9 reason other than to cause him pain . . . is simply not plausible and raises nothing more
 10 than a mere possibility.” (*Id.* at 7.) In short, Defendants argue Plaintiff has failed to
 11 plausibly allege that Brock’s and/or Steadmon’s use of the taser was not objectively
 12 reasonable from the perspective of a reasonable police officer. (*Id.*)

13 In response, Plaintiff asserts that “[a]ll claims are stated with sufficient
 14 specificity to give the defendants notice of the nature of the claims against them.”
 15 (ECF 9 at 2.) “Defendants mistake the ‘plausibility’ standard for a ‘credibility’
 16 standard.” (*Id.* at 5.) Plaintiff argues Defendants’ “conclusory reasoning” fails to
 17 specify “*why* the allegations are not ‘plausible.’” (*Id.* (emphasis in original).) Plaintiff
 18 suggests Defendants could have attached Brock’s and Steadmon’s reports “to prove
 19 that the allegations are ‘implausible.’” (*Id.*)

20 In reply, Defendants argue it is not their burden to establish implausibility. (ECF
 21 No. 10 at 3.) Defendants thus assert they have no burden to produce extraneous
 22 evidence, such as Brock’s and Steadmon’s reports, to establish implausibility. (*Id.*)

23 The Court first notes that neither party addresses the plausibility of Plaintiff’s
 24 allegations within the context of Plaintiff’s specific claims. The Court agrees with
 25 Defendants, however, that the facts contained in Plaintiff’s single paragraph of
 26 allegations, (ECF No. 1 at ¶ 10), are too sparse to support Plaintiff’s claims for
 27 excessive force, negligence, battery, IIED, and NIED. Intertwined with Plaintiff’s
 28 sparse factual allegations are important legal conclusions, such as “the officers stepped


1 into the residence without probable cause,” and that “[a]t no time was plaintiff a threat
 2 to the officers.” (*Id.*) The Court does not assume the truth of these conclusions, *Ileto*,
 3 349 F.3d at 1200, which in turn makes it difficult to assess whether Plaintiff has
 4 plausibly alleged that Brock’s and Steadmon’s use of force was unreasonable.
 5 Accordingly, the Court must grant Defendants’ Motion to Dismiss as to these claims
 6 as well.

7 CONCLUSION

8 After a careful review of the parties’ submissions, and for the foregoing reasons,
 9 **IT IS HEREBY ORDERED** that:

- 10 1. Each of Plaintiff’s claims are **DISMISSED WITHOUT LEAVE TO**
 11 **AMEND** to the extent they are asserted against the State of California or
 12 Brock and Steadmon in their official capacities;
- 13 2. Plaintiff’s First, Third, Fourth, Fifth, and Sixth Claims—as alleged against
 14 Brock and Steadmon in their individual capacities—are **DISMISSED**
 15 **WITH LEAVE TO AMEND**;
- 16 3. Plaintiff may file an amended complaint on or before **May 10, 2013**;
- 17 4. The hearing on Defendants’ Motion to Dismiss, currently set for May 3,
 18 2013, is **VACATED**.

19
 20 DATED: May 1, 2013

21 
 22 HON. GONZALO P. CURIEL
 23 United States District Judge
 24
 25
 26
 27
 28